

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.1082 OF 2005
IN
SUMMONS FOR JUDGEMENT NO.460 OF 2004
IN
SUMMARY SUIT NO.1327 OF 2003

1. M/s.National Industrial Corporation
& ors.

Appellants

vs.

M/s.Cottor International

Respondent

Mr.A.M.Saraogi for the appellants.

Mr.R.D.Dhanuka i/b.Mrs.A.R.Dhanuka for the respondent.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 1st December 2005

P.C.

Heard.

2. Admit.

3. Mrs.A.R.Dhanuka, advocate waives service for the
respondent.

4. By consent, the appeal is heard finally at this
stage.

5. In paragraph 4 of the plaint, the following
statement is made:

"4. The plaintiff says and submits that the defendants continued to pay the interest on the aforesaid loan amount at the rate of 18% p.a. from time to time. The defendants were also deducting the tax deducted at source from the said interest amount on the basis of the interest paid at the rate of 18% p.a., at the relevant time under the provisions of the Income Tax Act, 1961. The plaintiff craves leave to refer to rely upon the tax deducted at source certificate issued by the defendants from time to time showing the rate of interest paid at the rate of 18% p.a. to the plaintiff. The defendants have paid the interest to the plaintiff till 30th June, 2000. The last interest paid by the defendants to the plaintiff in respect of the said loan amount was paid on 27th July, 2000. The plaintiff craves leave to refer to and rely upon the bank's statement of the plaintiff showing the credit of the said amount when produced."

6. In the affidavit in reply in opposition to the summons for judgment, with reference to paragraph 4 of the plaint, the following reply is given:

"12. With reference to para 4 of the Plaint, I deny that I continued to pay the interest on the aforesaid alleged loan amount at the rate of 18% p.a. from time to time. I further deny that the defendants were also deducting tax at source from the said alleged interest amount on the basis of the interest paid @ rate of 18% p.a. at the relevant time under the provisions of the Income Tax Act, 1961, and put the Plaintiffs to the strictest proof thereof. I deny that the defendants have paid interest to the plaintiff till 30th June, 2000 and put the plaintiffs to the strict proof thereof. I deny that the last interest paid by the defendant to the plaintiff in respect of the said alleged loan amount was paid on 27th July, 2000 and put the plaintiff to the strictest proof thereof. I say that the plaintiff has not annexed or produced any such statement of account to the plaint."

7. In the light of the reply filed by the defendant, it is seen that there is no specific denial to the factum of receipt of the interest paid by them to the plaintiff on 27th July 2000. The payment of interest having been made through cheque results in fresh period of limitation. The Suit was filed on 31.03.2003 which is apparently within three years from 27th July 2000.

Thus, the defence of the defendant that the suit claim

is barred by time is virtually no defence.

8. The learned counsel for the appellant sought to urge that the amount that was paid on 27th July 2000 related to some other transaction between the parties. No specific facts about the said transaction have been

averred in the reply affidavit. It, thus, appears that

the stand set up by the defendant is make believe.

9. Before the trial Judge, the contention appears to have been raised that the transaction between the parties is hit by Bombay Money Lenders Act, no such contention was raised before us by the learned counsel for the appellant and, rightly so, as the loan advanced by the plaintiff to the defendant appears to be friendly loan.

10. Though, there is no merit in any of the defences

set up in opposition to the summons for judgment, in our considered view, by way of mercy an opportunity deserves to be granted to defend the Suit subject to deposit of Rs.6 lacs.

11. In this view of the matter, we find that the learned trial Judge was not justified in decreeing the Suit itself by making the summons for judgment absolute.

12. We, accordingly, allow the appeal in part and grant conditional leave to the appellant-defendant to defend the Suit subject to his depositing an amount of Rs.6 lacs within six weeks from today. The plaintiff-respondent is given liberty to withdraw the said amount on furnishing security to the satisfaction of Prothonotary & Senior Master of this Court and an undertaking that in the event of the Suit being dismissed, he would reconstitute the amount so withdrawn along with interest at the rate of 6% per annum.

13. Upon deposit of the amount within the time as aforesaid, the Suit shall stand transferred to the List of Commercial Causes and be proceeded with accordingly.

14. In case the amount of Rs.6 lacs is not deposited within the aforesaid time, the appeal shall be

treated as dismissed and the plaintiff shall be entitled to execute the decree as per the order dated 27th September 2005.

(R.M.LODHA, J.)

(D. G. KARNIK, J.)